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VIA FAX: (212) 805-7933

July 5, 2007

HONORABLE ANDREW J. PECK
UNITED STATES MAGISTRATE JUDGE
DANIEL PATRICK MOYNIHAN UNITED
STATES DISTRICT COURT
500 Pearl Street, Room 1370
New York, N.Y. 10007

MEMO ENDORSED - p2

Re: **Sakif, et al. v. United States**
Federal Docket No.: 06-CIV-2719 (AJP)
Our File No.: 0063-063

Dear Judge Peck:

Please allow this letter to formally advise you that Bronx Lebanon Hospital has decided *not* to pursue any further appeal or judicial review of the federal government's mid-litigation reversal denying FTCA coverage in this matter.

The immediate practical effect of this decision is straightforward, because it means that the United States of America is no longer a proper defendant in this matter, and must be dismissed. In any normal circumstance, this would result in any remaining claims being remanded to state court. Unfortunately, because of the procedural manner used by the plaintiff (i.e., starting simultaneous actions in both federal and state court, rather than waiting for the state court action to be removed to federal court), the court is still going to have to decide the plaintiff's pending application, which seeks to add the "state court" defendants directly to the federal action.

With regards to that application, we would maintain the position we articulated in our initial opposition to the plaintiff's motion, and respectfully suggest that it would be inappropriate, especially in the case in which discovery is almost complete, to suddenly add as defendants parties over whom this Court would normally have

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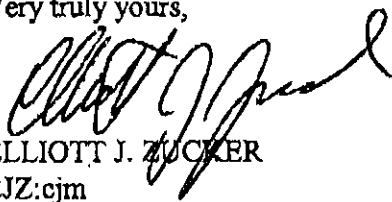
July 18, 2007

RE: SAKIF V. UNITED STATES OF AMERICA

no jurisdiction, since there are no federal questions involved and there is no diversity. We would again submit that the appropriate remedy would be for the plaintiff to simply resume prosecution of the state court action. If there are any disputes with regard to available defenses, or the need to repeat discovery, the presiding state court judge will be perfectly capable of dealing with those disputes.

Thank you for your courtesy with regard to this matter.

Very truly yours,


ELLIOTT J. ZUCKER
EJZ:cjm

VIA FAX:

cc: PEGALIS & ERICKSON (516) 684-2939
Attn: Rhonda L. Meyer

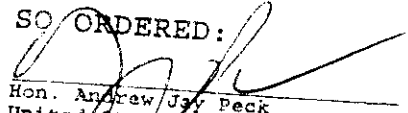
UNITED STATES ATTORNEYS OFFICE (212) 637-2750
Attn: Matthew L. Schwartz

DWYER & TAGLIA (212) 227-6050
Attn: Peter Taglia Esq.

MEMO ENDORSED 7/18/07

The Court is pretty sure that the
"suspect" should be given 90 days
to file a motion to dismiss the
state court action, unless the
state court judge (or judge) has
already ruled on the matter.
To protect the plaintiff's
rights in the state court
proceedings of 9/21/07.

SO ORDERED:


Hon. Andrew Jay Peck
United States Magistrate Judge

cc: B. J. Peck

BY FAX

FAX TRANSMITTAL SHEET



**ANDREW J. PECK
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT**

Southern District of New York
United States Courthouse
500 Pearl Street, Room 1370
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933
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Dated: July 18, 2007

Total Number of Pages:

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TRANSCRIPTION:

MEMO ENDORSED 7/18/07

The Court is putting this case on the "suspense" docket for a period of up to 90 days. During that time, plaintiff is to resume prosecution of its prior state court action, including adding (or trying to add) any additional parties (plaintiff or defendant) to that action. Plaintiff is to report on the status of the state court proceedings by 9/21/07.